
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH – CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID J. D'ADDABBO,

Defendant.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:06-CR-147

Judge Dee Benson

This matter is before the Court on Defendant David J. D'Addabbo's Petition for Expungement of Records. The Court, having reviewed Defendant's motion and the entire file in the above-captioned matter, renders the follow Memorandum Decision and Order denying Defendant's motion.

I. Background

In April 2006, a Superseding Indictment named Defendant in four counts: Corrupt Endeavor to Obstruct the Revenue Laws, pursuant to 26 U.S.C. § 7212(a); Mailing Threatening Communications, pursuant to 18 U.S.C. § 876(c); and two counts of Threatening a Federal Official, pursuant to 18 U.S.C. § 115(a)(1)(B). On August 14, 2006, Defendant entered a guilty plea pursuant to a plea agreement. Defendant pleaded guilty to Count III of the Superseding Indictment, Threatening a Federal Official, pursuant to 18 U.S.C. § 115(a)(1)(B), and the government agreed to dismiss all remaining counts. *See* Statement in Advance of Plea. At the same time, the Court imposed a sentence of credit for time served, and a three-year term of supervised release.

Defendant requests that all records in his case be expunged, particularly with respect to records that he served time in Weber County Jail. Defendant's motion and letter dated March 21, 2008, although difficult to understand, appears to explain that the grounds for expunction are that arresting officers and persons involved with Defendant's imprisonment committed numerous civil rights violations against Defendant.

II. Discussion

This motion is brought under the inherent power of the Court to expunge criminal records. The United States Court of Appeals for the Tenth Circuit has made clear that "the district court has the authority to order expunction, but that power is not unfettered. Expunction is committed to the discretion of the trial court, but it is not a remedy to be granted frequently." *United States v. Friesen*, 853 F.2d 816, 817-18 (10th Cir. 1988). Moreover, an order of expunction "should be reserved for the unusual or extreme case." *United States v. Linn*, 513 F.2d 925, 927 (10th Cir. 1975). An unusual or extreme case is generally defined as "when serious governmental misbehavior leading to the arrest, or unusually substantial harm to the defendant not in any way attributable to him, outweighs the government's need for a record of the arrest." *Doe v. Webster*, 606 F.2d 1226, 1231 (D.C. Cir. 1979).

For example, an unusual or extreme case could involve a situation where the charges against the defendant were dismissed based on lack of probable cause. *Sullivan v. Murphy*, 478 F.2d 938 (D.C. Cir. 1973). However, in this case, Defendant pleaded guilty, and the other charges were subsequently dropped as part of the plea arrangement. There is no evidence the other charges were dropped because of lack of probable cause.

Courts only have the power to expunge criminal records if the underlying criminal conviction or arrest is invalid: courts have “jurisdiction over petitions for expungement in certain narrow circumstances—namely, where the ‘predicate for expunction is a challenge to the validity of either the arrest or the conviction.’” *United States v. Rowlands*, 451 F.3d 173, 177 (3d Cir. 2006) (quoting *United States v. Noonan*, 906 F.2d 952, 956 (3d Cir. 1990)). In Defendant’s motion, he alludes to an unlawful arrest, but provides no evidence demonstrating why or how the arrest was unlawful.

The reason the underlying conviction or arrest must be invalid (usually invalid because it is unconstitutional) in order to consider an expunction request is because otherwise there is no underlying substantial harm to the individual. In other words, the balancing test of whether the harm to the individual outweighs the government’s need to keep a record only applies when there is actual harm to the individual. *Id.* When a conviction or arrest is valid, there is no undue harm to the individual: “expungement is not available to remedy ‘adverse consequences which attend every arrest and conviction. Those are unfortunate but generally not considered *unwarranted* adverse consequences.’” *Id.* at 179 (quoting *United States v. Flowers*, 389 F.3d 737 (7th Cir. 2004)).

In *United States v. Pinto*, the Tenth Circuit addressed the difference between an expunction request when the defendant was wrongly convicted, and an expunction request when the conviction was just: “there is a large difference between expunging the arrest record of a presumably innocent person, and expunging the conviction of a person adjudged as guilty in a court of law.” 1 F.3d 1069, 1070 (10th Cir. 1993). Unless it is an extreme case, an invalid conviction will not necessarily be expunged, and when “there is no allegation that the conviction

was in any way improper,” there is no cause for expunction. *Id.* at 1070–71. In the current case, Defendant admitted to the wrongdoing; there is no evidence the conviction is invalid.

Defendant has not provided any evidence that his situation is an extreme case which merits expunction, nor has he demonstrated that any substantial harm not attributable to him would result if the expunction is not granted. Accordingly, Defendant’s Petition for Expungement of Records is DENIED.

IT IS SO ORDERED.

DATED this 28th day of April, 2008.

A handwritten signature in black ink, reading "Dee Benson", written over a horizontal line.

Dee Benson
United States District Judge